

An Overview of Omnibus Law from Point of Establishing Legal System in Indonesia

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Abstract.

The purpose of this research to get a clear answer study review of omnibus law from the point of view of the formation of the legal system of legislation in Indonesia and the research approach method used is normative juridical by reviewing legal principles and analyzing existing laws and regulations and reviewing the formation of laws and regulations namely Act No. 12 of 2011 amended by Act No. 15 of 2019 with the omnibus law. Based on the research it can be concluded that the establishment of omnibus law if viewed from the perspective of the formation of legislation, the position of the omnibus law in the hierarchy is the same as the law regulated in Article 7 paragraph 1 of Act No. 12 of 2011 concerning the formation of legislation. In theory, the position of omnibus law has not been regulated, but rational legitimacy can be found in the system of forming legislation in Indonesia. The position of omnibus law can be based on Act No. 12 of 2011 which has been amended by Act No. 15 of 2019 concerning the system for the formation of legislation and the process of forming legislation on academic texts and the draft omnibus law draft is in accordance with the formation of legislation, namely Act No. 12 of 2011 was amended by Act No. 15 of 2019. This law is a substantive requirement and a technical requirement in the formation of laws and regulations in Indonesia. The consequence of implementing the omnibus law is that the existing law is still valid, except for some articles (legal material) that have been replaced or declared invalid and the existing law is no longer enforced.

Keywords: Formation; New; Omnibus; System.

1. Introduction

As we all know, the state of Indonesia is a state of law according to what is mandated by the mandate of the 1945 Constitution Article 1 paragraph 3. As a state of law, the state of Indonesia adheres to the supremacy of the constitution, namely: constitution, constitutionality and constitutionalism. The constitution is the highest law in writing, while the constitutionality of an act and an action is in accordance with the constitution and the constitutionality of a citizen is understood¹. Therefore, citizens are required to enforce normative and empirical enforcement of the rule of law, that all problems are resolved by law as the highest guideline. Normative recognition of the rule of law is manifested in the formation of legal norms which are manifested in the hierarchical formation of laws that culminates in the supremacy of the constitution. While empirically manifested in government and society as the rule of law. All actions must be in accordance with valid and written

¹Tafta Aji Prihandono, Sri Kusriyah, *Awarenes On Constitutional Rights Of Citizens And Form Of Protection Of Constitutional Rights Of Citizens In Indonesia*, Law Development Journal, Vo 1 Issue 4, December (2018), P 1003. url : <http://jurnal.unissula.ac.id/index.php/rh/>

laws and regulations, and the law is distinguished from written and unwritten basic laws².

The legal reform of the Indonesian nation is marked by the amendments to the 1945 Constitution of the Republic of Indonesia, there are four changes³. Because in order to create development in the field of law, one of the goals to realize a nation's ideals, especially is the welfare of the general public. There are several foundations as a foundation in the development of national law implementation, including the ideal foundation as well as the operational basis⁴. The above basis is the basis for implementing national legal politics, because legal politics is very decisive in terms of equitable national legal policy development policies which will be implemented with predetermined periods, with predetermined planning, the ideals of developing legal concepts will come true⁵.

Legal politics is essentially a thought with the hands of the state through the instruments of the state itself, it can be the President, DPR, MPR, and so on. Political law theory is seen as a means of realizing a better social life⁶. And it can also be interpreted as rare that can be used by the government in realizing the national legal system⁷. The intervention is to create law both in the implementation and development of the law itself. So it can be interpreted that the legislature is the most important door in carrying out legal politics nationally. It can be seen from the practice of state administration, legislation has a function, among others, as a legal umbrella in terms of implementing state activities.⁸ Bagir Manam is of the opinion that the existence of laws and regulations in terms of formation has a very strategic role, among others, as a supporter related to the performance of state administration.

President Joko Widodo's leadership in the first period until entering the second period currently leaves a lot of homework, both from the regulation of laws and regulations. And in its substance there is an overlap between one regulation and another. Legislation in a country can be said to be an integral part of the country's

²Sri Praptini, Sri Kusriyah, Aryani Witasari, *Constitution And Constitutionalism Of Indonesia*, Law Development Journal, Vo 2 Issue 1, March (2019), P 8. url :<http://jurnal.unissula.ac.id/index.php/rh/>

³Maryanto, Ahmad Suhasan, *Polices Of Law Of Social Security Of Passenger Accidents Construction Of State Responsibility*, Law Development Journal, Vo 3 Issue 1, March (2021), P 32. url : <http://jurnal.unissula.ac.id/index.php/rh/>

⁴Pusat Perencanaan Pembangunan Hukum Nasional, (2012), *Perencanaan Hukum Nasional 2015-2019*, Badan Pembinaan Hukum Nasional, Jakarta, p. 56.

⁵E. Sundari, Endang Sumiarni, (2015), *Politik Hukum & Tata Hukum Indonesia*, Yogyakarta : Cahaya Atma Pustaka. p. 8.

⁶Sri Kusriyah, (2019), *Politik Hukum Desentralisasi & Otonomi Daerah Dalam Perfektif Negara Kesatuan Republik Indonesia*, Semarang : Unissula Press, print. p. 50.

⁷Indah Setyowati, Siti Rodhiyah Dwi Istinah, *The Urgency Of Legal Politics In The Draft On Religious Harmony*, Law Development Journal Vo 2, Issue 4, (2021), p. 836. <http://jurnal.unissula.ac.id/index.php/ldj/issue/archive>

⁸A. Rosyid Al Atok, (2015), *Konsep Pembentukan Peraturan Perundang-Undangan*. Malang : ,Satera Press. p. 3.

legal system⁹. If the laws and regulations overlap and contradict the higher regulations, then it can be said that realizing the law will not be achieved.¹⁰

In order to overcome problems related to statutory regulations, President Joko Widodo's idea of the Omnibus law as an effort to resolve conflicting regulatory regulations that can be said to be chaotic and not in harmony with other regulations and hinder the acceleration of development and the entry of foreign investment. By implementing Omnibus law, can it be applied in Indonesia because it adheres to the civil law system, if viewed from a substance, omnibus law can be applied using the common law system state model. Because it can be said that the law is an umbrella law as its parent, so that the legal position is higher when compared to the law below it.¹¹

Act No. 12 of 2011 concerning the Establishment of Legislation, is not known in terms of the ratification of the omnibus law, especially in Article 7 paragraph 1. The existence of laws as a type of legislation has an equal position under the Act. The 1945 Constitution of the Republic of Indonesia and the provisions of the MPR¹². Therefore, the omnibus law has ratified the direct positioning of a higher existence compared to other legislation.

From the occurrence of the formation of the legislation, it is very interesting to make a study because to form a law it should not be separated from Act No. 12 of 2012 as a reference for the formation of legislation in Indonesia. And interestingly again in the omnibus law legislation it is not regulated in terms of revocation, the change is in Act No. 15 of 2019 concerning amendments to Act No. 12 of 2011 concerning the formation of laws and regulations in Indonesia and the regulation does not regulate omnibus law, research objectives based on what has been described from the background above, about what will be studied to get a clear and desired answer, the author will examine how review of omnibus law from the point of view of establishing the legal system of legislation in Indonesia.

2. Research Methods

The method applied for this writing is normative juridical law research, which means that in discussing the problems of what is made by the author by reviewing both legal principles and analyzing existing statutory regulations.¹³ So the author will examine the formation of legislation, namely Act No. 12 of 2011 which has been amended by Act No. 15 of 2019 with a new law, namely the omnibus law.

The data sources used by the author are primary legal materials regarding the laws and regulations related to the above issues, and also use secondary legal

⁹M. Ilham F Putuhena, , Politik Hukum Perundang-Undangan Dalam Upaya Meningkatkan Kualitas Produk Legislasi, Jurnal RechtsVinding, Vo 1 No 3, December (2012), p. 346 url : <https://www.rechtsvinding.bphn.go.id/ejournal/index.php/jrv/article/view/89>

¹⁰Setio Supto Nugroho, (2009), Harmonisasi Pembentukan Peraturan Perundang-Undangan , Dokumentasi & Informasi Hukum, Bagian Hukum, Biro Hukum & Humas, Jakarta. p. 3.

¹¹Maria Farida Idrati, (2020), *Menyikapi "Omnibus Law Sebagai Undang-Undang Sapu Jagat"* Makalah di sampaiakn di Seminar, Menyikapi Omnibus Law Pro & Kontra RUU Cipta Lapangan Kerja, Jakarta, p. 6.

¹²Ahmad Redid and Ibnu Sina Chandranegara, (2020), *Omnibus Law Diskursus Pengadopsiannya Ke Dalam Sistem Perundang-Undangan Nasional*, Depok : Rajawali Press . p. 78.

¹³Soerjono Soekanto, Sri mamudji, (2010), *Penelitian Hukum Normatif*, Jakarta : Rajawali Press. p, 12.

materials, namely materials that provide explanations related to primary legal materials such as books, research results, and legal journals and other legal materials. Tertiary law, namely instructional and explanatory materials for primary legal materials and secondary legal materials, such as language dictionaries, legal dictionaries, and encyclopedias.¹⁴

3. Results and Discussion

Referring to the theory of the hierarchy of legal norms that apply in Indonesia, there are two types, including formal and functional hierarchies, Hans Kelsen's formal hierarchy is often put forward as *Stufenbau des recht*, he said that laws and regulations should not conflict with the laws and regulations in Indonesia. It is also in its formation and must be in line with the main law or its legal umbrella¹⁵. Basic norms are the highest norms and are determined or determined by the community first, basic norms can be called legal rules that apply in society and are obeyed by a sanction. Han Nawiasky, a disciple of Hans Kelsen, he said that, apart from the norms being layered and hierarchical from top to bottom, he also said that the norms were grouped.¹⁶

Thus the hierarchical theory above contains a principle as follows, legislation at the lower level must be sourced from the laws and regulations above it, statutory regulations must not conflict with the material substance or deviate from the material above.¹⁷ The above principles have been formalized by MPRS Decree No. XX/MPRS/1966, continuously revised with MPR No.III/MPR/2000 in 2004 has been perfected, then Act No. 10 of 2004 was born, namely the procedure for making laws and regulations in 2011 was replaced with Act No. 12 Year 2011 concerning the formation of laws and regulations.

The laws and regulations in Indonesia are written and binding for everyone, so the hierarchy is where the laws and regulations must not conflict with the laws and regulations above, both in terms of material and the process of formation. Article 7 paragraph 1 of Act No. 12 of 2011 contains the hierarchy of laws and regulations in Indonesia. The position of the omnibus law in the system of forming laws and regulations can be based on Act No. 12 of 2011 which has been amended by Act No. 15 of 2019 which refers to Article 7 paragraph 1 of Act No. 12 of 2011, essentially in The law does not recognize the formation process as well as changes to the omnibus law.

The rule of law theory requires that state power-holding institutions exercise their powers under the control of the law¹⁸. Theoretically in the formation of legislation in Indonesia from the concept of omnibus law there are no rational rules and legitimacy in Indonesia, if we equate the process of forming omnibus law

¹⁴Amirudin Ashshofa, (2013), *metode penelitian*. Jakarta : Rineka Cipta. p.32.

¹⁵Jimly Asshiddiqie and M. Ali Safa'at, (2006), *Teori Hans Kelsen Tentang Hukum*, Jakarta : print. 1, Kon Press. p.100

¹⁶Muntoha, (2010), *Otonomi Daerah & Perkembangan, Peraturan Daerah Bernuasa Syariah*, Yogyakarta : print. 1, Safiria Insania Press. p. 28.

¹⁷Bagir Manan, (2003), *Teori & Politik Konstitusi*, Yogyakarta : print. 1, FH UII Press. p. 211.

¹⁸Muhamad Rois, *The Role Of Governor As Vice Of Central Government In Regional Regulatory Oversight Regional Tax & Regional Retribution*, Law Development Journal, Vo 3, Issue 1, (2021), P. 115, <http://jurnal.unissula.ac. en/index.php/ldj/issue/archive>

legislation with similar laws, there are no problems because hierarchically it has been included in the law. Act No. 12 of 2011. If you look at the existing practice in countries that have implemented the law, Jimly Asshiddiqie, there are two technical patterns in the preparation, among others¹⁹.

It's just that in omnibus law it can be interpreted as a law of necessity, because in a codification of existing materials it is made into one codification. If we look at the concepts above, being able to make an assessment can also make a comparison, Act No. 11 of 2020 concerning Job Creation produces a very thick law that integrates 84 laws into one law. Law whose academic text is 2,500 pages.

Regarding the implementation of omnibus law in several countries, it can be seen in the same context in Indonesia, Edmond Makarin said that usually omnibus law is formed in law.²⁰ There are those who argue that the omnibus law is the umbrella law of a law because it includes 84 laws into one law and has power over other laws. The difference in the technique of forming legislation that is commonly used in Indonesia with omnibus law can be distinguished in terms of the substance it regulates, in terms of the formation of legislation and its codification.

Although Act No. 12 of 2011 concerning the formation of laws and regulations which have been amended by Act No. 15 of 2019 does not recognize omnibus law, the omnibus law must comply with Act No. 12 of 2011 concerning the formation of regulations. The legislation that has been amended by Act No. 15 of 2019 is related to the position and also the material in the substance of the law. Article 7 paragraph 1 of Act No. 12 of 2011 concerning the formation of laws and regulations mentions the hierarchy of laws and regulations in Indonesia, among others.

- 1945 Constitution.
- MPR Decree.
- Act or Substitute Law.
- Government regulations.
- Presidential decree.
- Provincial Regulations.
- Regency/City Regional Regulations.

If viewed from the hierarchical provisions above, it is related to the work copyright law, then the law remains under the 1945 Constitution, but is higher than similar laws. Act No. 11 of 2020 is the first law to be implemented in Indonesia, this law revokes Act No. 3 of 1982 concerning mandatory company registration *staatsblad* of 1926 No. 226 Ju *Staatsblad* of 1940 No. 450 of the law on nuisance and amending Law 82 laws including Act No. 3 of 2020 concerning Amendments to Act No. 4 of 2009 concerning Mineral and Coal Mining, Act No. 8 of 2019 concerning the Implementation of *Hajj and Umrah*, Law Act No. 22 of 2019 concerning Sustainable Agricultural Cultivation Systems.

The process of forming statutory regulations on academic texts and draft omnibus laws is in accordance with the formation of laws and regulations, namely Act No. 12 of 2011 which has been amended by Act No. 15 of 2019. This law is a substantive requirement and technical requirements in the formation of legislation

¹⁹Jimly Asshiddiqie, *Op, Cit.*, p. 222

²⁰Adhi Setyo Prabowo Dkk, *Politik Hukum Omnibus Law di Indonesia*, Jurnal Pamator Vo 13 No 1, April (2020), P. 5. url : <https://journal.trunojoyo.ac.id/pamator/article/view/6923/5416>

in Indonesia. The consequence of implementing the omnibus law in Indonesia is that the existing law is still valid, except for some articles (legal materials) that have been replaced or declared invalid and the existing laws are no longer enforced, if the articles (legal materials) are replaced or declared invalid is the essence/spirit of the law²¹.

4. Conclusion

The conclusion of the method in the formation of omnibus law when viewed from the perspective of the formation of legislation, the position of the omnibus law in the hierarchy is the same as the law regulated in Article 7 paragraph 1 of Act No. 12 of 2011 concerning the formation of legislation. In theory, the position of omnibus law has not been regulated, but rational legitimacy can be found in the system of forming legislation in Indonesia.

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²¹Dhaniswara K. Harjono, , "Konsep Omnibus Law Ditinjau Dari Undang-Undang Nomor 12 Tahun 2011 Tentang Pembentukan Peraturan Perundang-Undangan", Jurnal Hukum : Hukum Untuk Mengatur & Melindungi Masyarakat Vol 6 No 2, Agustus (2020), p. 103. url :<http://ejournal.uki.ac.id/index.php/tora/article/view/1975>.

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